IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Civil First Appeal No.73/1992

Jagdish Goods Transport Company,
New Mandi, Bharatpur
...Defendant-Appellant
Versus
United India Insurance Company Limited
...Plaintiff-Respondent
AND
M/s Dalmia Dairy Industry Limited
...Defendant-Respondent

Date of Judgment ::: 05th December, 2007

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Shri R.P. Garg, Counsel for the appellant
None present for the respondents

By the Court:-

This regular appeal under Section 96 of the Code of Civil Procedure on behalf of the defendant no.1-appellant - Jagdish Goods Transport Company, is directed against the judgment and decree dated 01.11.1991 passed by the Additional District Judge No.2, Bharatpur, in Civil Suit No.31/1986, whereby the suit filed by the plaintiff-respondent no.1 - United India Insurance Company Limited for recovery of a sum of Rs.27,309.60p. was decreed against the defendant no.1-appellant, with interest at the rate of 6% per annum from the date of filing of the suit i.e. 17.10.1984 till the date of realization of the decretal

amount.

Briefly stated the facts of the case are that 400 bags of the milk-powder were sent by defendant no.2-respondent M/s Dalmia Dairy Industry Limited from Bharatpur to Calcutta through carrier defendant no.1-appellant on 15.10.1981. Each bag was weighing 25 kg milk-powder. The truck carrying the said goods met with an accident resulting in damage to the goods. The goods were insured therefore the total loss amounting to Rs.27,309.60p., suffered by the defendant no.2 was recovered from the Insurance Company. The Insurance Company made the payment to M/s. Dalmia Dairy Industry Limited, but, in the opinion of the Insurance Company, the accident took place on account of negligence on the part of the defendant no.2-appellant Transport Company, therefore, the present suit was filed for recovery of a sum of Rs.27,309.60p.

The suit was contested by the defendants wherein contents of the plaint were denied. Apart from others, the plea in defence taken was that goods were booked to be sent at 'owners risk', therefore, if any loss or damage is caused to the goods, the carrier transport company is not responsible to make any payment of compensation on account of damage or loss. The defendant no.2 also filed separate written-statement wherein he admitted the contents of the plaint and supported the plaintiff.

On the basis of the pleadings of the parties, the learned trial court framed 12 issues, which are reproduced in Para 5 of the impugned judgment passed by the trial court. In support of the case, both the parties led their oral and documentary evidence.

The learned trial court, after considering the submissions of learned counsel for both the parties and, after considering their evidence on the record, decreed the suit of the plaintiff against the defendant no.1. Being aggrieved with the same, the present appeal has been preferred.

Shri R.P. Garg, the learned counsel for the appellant contended that the goods, in question, were booked through Biltee issued to defendant no.2 and there was specific condition in it i.e. 'owners risk', therefore, in view of the proviso to Section 6 of the Carriers Act, 1865, the defendant no.1 cannot be made liable for any compensation whatsoever.

He further contended that the goods were insured and the Insurance Company has already made the payment of loss suffered by the defendant no.2, therefore, the present suit ought to have been dismissed.

Shri R.P. Garg, in support of his contentions, relied upon the decision in the case of M/s. Milap Carriers Transport Contractors and Commission Agents, Hyderabad Vs.

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Another submission of Shri R.P. Garg, the learned counsel for the appellant, is that there was no privity of contract in between the appellant and the Insurance Company, therefore, the suit was not maintainable against the defendant no.1-appellant and the same was liable to be dismissed.

No one has appeared on behalf of the respondents No.1 and 2 in spite of service of notice of appeal.

I have considered the submissions of learned counsel for the appellant and examined the impugned judgment as well as the record of the trial court.

The learned trial court framed a specific issue i.e. Issue No.10 - whether the plaintiff is not entitled to get any compensation on account of the goods being sent at owners risk? The trial court has considered the evidence on the record and decided the Issue no.10 against the defendant-appellant.

I myself examined the evidence on the record and find that, apart from reasons assigned by the trial court while deciding Issue No.10, one additional reason is also there for deciding Issue No.10 against the defendant-appellant i.e. there was no written contract to show that the goods were booked at 'owners risk'.

The learned counsel for the appellant has referred

one biltee i.e. GR No.5633, which contains certain terms and conditions on the overleaf thereof, but, in my view, the said document cannot be considered for the reason that it has not been exhibited during the trial of the suit and the same cannot be treated as part of the record. I further find that it is only signed by an Agent of the defendant-appellant Jagdish Goods Transport Company and not by other party, therefore, it cannot be treated as an agreement or acceptance of the condition i.e. at 'owners risk'.

In these circumstances, I do not find any illegality in the finding of the trial court in respect of Issue No.10 and the trial court has not committed any illegality in deciding the same against the defendant no.1-appellant.

I have also considered the above referred judgment in the case of M/s. Milap Carriers Transport Contractors and Commission Agents, Hyderabad Vs. National Insurance Company Limited (Supra), and I find that the facts of that case, mentioned in Para 21 of the judgment, are altogether different from the facts of the case in hand and the said judgment is distinguishable and cannot be made applicable in the facts and circumstances of the present case.

Another submission of learned counsel for the appellant that there was no contract in between the appellant and Insurance Company, is concerned, suffice it

to say that there was a contract in between the Insurance Company and the defendant No.2-respondent M/s. Dalmia Dairy Industry Limited and when the goods were insured and all rights of the insured were transferred to the insurer, the insurance company stepped in the shoes of insured and was fully competent to recover the said amount from the transport company in accordance with the law. The trial court has considered this aspect of the matter also and has assigned good reasons while deciding the same in favour of the plaintiff-respondent and I do not find any illegality in the said finding recorded by the trial court.

No other point has been urged on behalf of the appellant.

In view of the above, I do not find any merit in any of the contentions of the learned counsel for the appellant.

The appeal, being devoid of any merit, is hereby dismissed.

Since the respondents have not put appearance, there will be no order as to costs.

(Narendra Kumar Jain) J.

//Jaiman//
S.No.25 (WL)